New Jersey Society of CPAs

Paycheck Protection Program Live Q&A

April 10, 2020

Transcript

Don Meyer:

Good morning. I'm Don Meyer, chief marketing officer at the New Jersey society of CPAs. And welcome to our paycheck protection program or PPP live Q&A. I'm joined by Frank Boutillette, and Daniel Mayo from Withum Smith and Brown. Frank is a partner at Withum's financial services and investment group and a past president of the NJ CPA. And Dan is a principal at Withum's national tech services group. Just a couple of reminders before I hand the program over to Frank and Dan. First there'll be no CPE credit awarded for this program, so no need to look for the codes, or ask us about the codes along the way. Second, after a few slides that Frank and Dan are going to provide they are going to get to as many questions as possible. We're going to have more or less a hard stop at 11 o'clock, so they may not be able to get to every question, but hopefully they will.

Don Meyer:

We've already provided them with more than two dozen questions in advance. If you have a question, you can use the chat function at the bottom of the screen. You can type in your question and hopefully I will be able to get to it. But obviously if the question's already been addressed please don't add to the list of questions that they're already looking at. If we don't get to your question for whatever reason, there are other opportunities to submit questions, you can go to the NJ CPA open forum where a lot of the questions are currently being posted. Or you can send us a message at feedback@njcpa.org.

Don Meyer:

And lastly, if you miss anything or if you have to drop off for any reason, we will be posting, we're recording this video and we will be posting it on the NJ CPA website, our open forum, social media platforms. We'll put it all over the place so you can't miss it. And then Rachel will probably be doing some updates where she'll include a link to this as well, so you don't have to worry about missing anything. So with that, I will turn it over to Frank and Dan.

Frank Boutillette:

All right, thanks. Thanks Don. Good morning everybody, Frank Boutillette here this is not my normal kind of discussion, usually am an A&A partner. And I used to talk about A&A topics, but this was a tax topic or a legal topic. And I'll be honest with you as the tax folks that read the tax laws, I give a lot of credit to you because the way things change so often since I started getting involved with this about three weeks ago we've gone to probably 180 to 360 degree turn on this. My speaking colleague Dan Mayo, is I think you're an attorney, right Dan?

Dan Mayo:

Yes.

Frank Boutillette:

So he's been very helpful in this process. So what we're going to try to do today is just walk through some of the slides about where we see most of the questions are and concerns. And I know it's very confusing because things have changed, like I said before, completely from where it was three weeks ago to where it is now. And hopefully every day, every night there's a new update on the US treasury. So the first thing is, go to sba.gov, it's a good place to go. UStreasury.gov is another place to go to get information. And so without any further ado, we'll start the process on what the SBA has offered.

Frank Boutillette:

So the SBA has two different programs that are out there right now. There was one that's disaster assistance loan program or the economic injury disaster loan, which is EIDL. And they also have with that is the grants. They're offering emergency grants up to $10,000. What we have heard recently from some clients, and this isn't official, actually a Massachusetts SBA division came out and said that they will be offering $1,000 per employee up to $10,000 would be that grant. So they've reduced the amounts that they were giving originally. So I believe that the most you'll get is $10,000 for that grant.

Frank Boutillette:

I've had several clients that have applied two weeks ago and they're still waiting to hear about the money coming in from that grant. The next program is a standard 7(a) loan program, which was amended under the cares act. So basically there always was this 7(a) loan. What they did with the cares act was they made some amendments and adjustments to the law that was written. So it is kind of confusing that some of the cares act information was kind of put in between the actual law. So it's not as simple as just reading the cares act and getting all the information that you need. Next slide, certifications. This is the one thing I want to just make very clear that the certification on the actual application that your client or you have to sign off on this current economic uncertainty makes the loan necessary to support your ongoing operations.

Frank Boutillette:

The funds will be used to retain workers and maintain payroll or to make mortgage lease and utility payments. And that you haven't received any other loans under the same program. This is key to this. And if you think about it, and the way we've thought about it at with them is that what is the purpose of this loan? It's to get the workers, their full paychecks that they were receiving before the disaster occurred. So if they're sitting at home, the government wants you to still pay those people so they're off unemployment. And if you keep that in mind when you're reading through the guidance you'll see how some things that are very ambiguous or not clear will become a little more clear through this process. But again, you have to certify that you have had that it's necessary to get the loan. Next slide. Dan, do you want to talk about some of the eligible borrowers?

Dan Mayo:

Sure. Yeah. The eligible borrowers include 501 C3 nonprofits. Keep in mind, this is only C3, not all the 501 Cs. A C4, C5, C6 are not covered, and those nonprofits would be eligible for different benefits such as the employee retention credit and the payroll tax referral. Veterans organizations and other entities. There's two general categories of people that qualify for the loan terms of business size. Generally it's 500 or fewer employees. And for this purpose, a full time employee counts as one. And so as a part time, that counts as one. It's not a full time equivalent concept. 500 and fewer employees than there are exceptions. And so they have to and US-based employees. The exception is when you look at the NAI CS codes and the SBA has certain revenues. There are certain revenue standards or employee base standards.

Dan Mayo:

When you look up that code, if there's a revenue based standard and your client is under that standard, they qualify. If there's an employee base standard and say 1,250 employees and your clients under that, they still qualify. There's also this alternative size standard. So this is sort of the third way to come in under the general SBA 7(a) rules. And that's where you have a maximum tangible net worth of not up to $15 million, and an average net income after taxes of not more than five million for the last two years. That's a combined test. When you think about it, there's really four ways to come in under 500 employees in the US is one.

Dan Mayo:

Two, and then you get into the SBA small business concern definition, which is three, which is you meet the employee number standard, this is greater than 500. You meet the revenue based size standard, all the alternative tests, which is the tangible net worth and the average of net income test. On the tangible net worth, there's very little guidance on the meaning of that. We believe it incorporates your assets minus your liabilities, minus then the goodwill and intangibles. So the tangible concept is meant to exclude goodwill and intangibles. And going back to the list of eligible borrowers it includes sole proprietor, independent contractors and self employed individuals. And we'll cover these a little more when we get into the definition of payroll costs and what's forgivable. There also are affiliation rules that apply. So the business is under common control. You need to aggregate the number of employees.

Dan Mayo:

If you have a parent corporation as a wholly owned subsidiary control is presumed to exist, because they have greater than 50% of the ownership of the voting stock. And therefore you have to add the employees of both the subsidiary and the parent. So there's, also you look at brother, sister companies under common control. The affiliation rules are quite broad and they look at a variety of tests, not just ownership. There's ownership, there's common management, there's certain contractual relationships between the entities. And also it's not just greater than 50%. Control can exist if there are three equal owners of the business, each own 25%. And then there's some other small owners. Each of those generally would be presumed to be affiliates of the company. So there are somewhat broad those rules and those are the rules that the private equity firms and venture capital firms are lobbying to have modified.

Dan Mayo:

So their portfolio companies can fit within and qualify for these PPP loans. These rules are also waived for certain codes. That's code 72 for hotel and food services. That's an important code. I think it's a six digit code. The NAI CS code. And it begins with a seven two, it tells you what the general service industry it is. It's hotel and food services. Also, there's a franchise exclusion that you waive the affiliation rules. And also if you're owned by a small business investment company, that's turned out to be a very helpful exclusion for many businesses as long as you have a shareholder that is in there. Let's turn to the next slide, Frank. Now we get into the definition of payroll costs. And so how do you determine, this is used to determine a couple things.

Dan Mayo:

One, the maximum loan amount and then two, it's also used to determine the forgiveness amount and it's sort of step one if you want to call it that of the forgivable loan amount. So when you look at what's included in payroll costs, this is something that's been changing many times, even a lot of different interpretations out there. Some of which have been wrong. And so, Frank and I, we're thinking of a couple of large companies in particular who came out and made some very public mistakes in the calculation here. So there's two sort of big buckets and we'll cover each the first year employees and the second down on the bottom in black there are sole proprietors, independent contractors, self employed people. So we'll start with employees. What does payroll cost? What's included? Well, wages, salary, commissions, and tips up to the cap of 100,000 a year.

Dan Mayo:

The cap applies only to wages, not to these other items. That's included in payroll costs for employees. You also add in any vacation pay, parental leave, sick family leave, medical or sick leave. That's included. Any dismissal or separation, severance type payments, payments or group healthcare benefits, including the premiums that the company pays. Again, this is the employer portion. Retirement benefits the company provides, I think 401k matching contributions here. And then any employer, state or local taxes on the compensation. So this like state unemployment insurance is an example here.

Dan Mayo:

What does it not include? It does not include the employer share of federal employment taxes. So FICA, Medicare, and also federal income tax, withholding a state income tax withholding, that's excluded. What's it also included is compensation to any employee who's principal place of residence outside the US. And then finally, any qualified sick leave or family under that phase two legislation that came out in mid-March. The family's first Corona virus response act. The reason for excluding that is they don't want people to double dip. So given that this law, this definition of payroll costs is used to determine the maximum loan amount and the forgiveness amount. They didn't want the employers to double dip and have the government pay their compensation under the sick leave or family provisions. And then have the employer get a forgivable loan based on that.

Dan Mayo:

And finally there's a definition here for what are the payroll costs for sole proprietors, independent contractor self employed people. And it is capped at 100,000 a year per person as with employee wages. But the definition is much narrower. And I know we don't know if it's intentional or not. But it includes wages, commissions, income and net earnings from self-employment, but it does not include the other items such as, group health care benefits, retirement benefits, and state taxes. So that's a key difference that's going to be coming up because the independent contractors and sole proprietors will start to applying them. And April 10th is when the PPP application process opens up for them, which is today. So this is sort of the wave, the phase two of the application process. April 3rd is when it started for companies and today it opens up for these other people. So with that, I'll turn it back to Frank, for the next line.

Frank Boutillette:

Great. And I saw some questions coming in Dan, so I just want to and they're all about this point. So yes, on independent contractors, the way the law is written right now and again, it could make changes. The FAQ's had been coming out on April 7th. They came out with an FAQ which kind of clarify some issues that everyone was having. So continually look at the sba.gov website. Another great place to go to find this information out is withum.com. We have kept our website very current with all this information. So as new updates come out, check our website, you'll see we're trying to stay current with this. So on the employee, on a silver proprietor in independent contractor, it's up to $100,000 of the net earnings.

Frank Boutillette:

So I think Dan, in that case, if they have their schedule C completed for 2019, they will use that amount for the net earnings, and it will not include at this point anything else for health insurance or anything like that. And I saw a question on S corporations. If there's an S Corp and they're four owners. Yeah, the four owners are employees. So they can apply under the one S corporation. And again, their salaries are up to 100,000. It does not include if you have profits in the S Corp that you're paying tax on, it's really covering the net earnings or net self employment income.

Dan Mayo:

Just the wages, not the distribution.

Frank Boutillette:

Not the distributions. Correct. Okay. So, now you take the payroll costs that we had before. And you multiply that by 250%, or two and a half times the average monthly payroll costs incurred during the last 12 months before the date on which the loan is made. Now that was the law. What has come out on the instructions form for the PPP loan. And the back says that most businesses will use a calendar year of 2019. And FAQ came out on April 7th and I mentioned and that said that it's the option of the business to determine which period they use, whether to use it 12 months. Which would be, if you're applying for loan in April, you would probably use April 1st 19 to March 31st, 2020 as your 12 months. But you can also use 2019 what we recommend and we're telling all of our clients, call your bank, find out what the bank will accept.

Frank Boutillette:

That's the first place to start because some banks are saying we'll take 2019, some bank just saying, no, we have our everything figured out based on the actual law. We're not changing our forms. So we want you to go through March 31st, 2020. Okay. And then to that amount you can add any outstanding loans that existed under 72B, which is the disaster loans, or if you had any previous loans with the SBA. That will be edit in. That'll be the amount of the loan that you will get your cap, that $10 million. Now the uses of the loan proceeds. You can use the loans for payroll costs, rent under release and force prior to February 15th, 2020. Any utilities and utilities cover telephone, obviously gas, electric and transportation. We're not exactly sure what transportation they mean.

Frank Boutillette:

If you're flying all over, well, nobody's flying all over the country right now, but is that transportation? We're not sure. We're assuming that some more guidance will come out in the interim final rule that came out on April 2nd. It was interim final rule. So we're assuming there's going to be a final, final rule. We're not sure, but that in that interim final rule came out and was talking about that they will come out at some later date with some of the forgiveness information and the uses. And this all goes into the forgiveness that Dan, will talk about in a minute. So interest on mortgage obligations incurred before 215, and any interest on any other debt obligations that were occurred before February 15. So if you had any mortgages in existence prior to those dates, that interest only will be used for the proceeds.

Frank Boutillette:

You cannot prepay your mortgages, not prepay the loans, that won't be counted towards an acceptable use. Now the forgiveness stuff, Dan you want to, this is the most important part. I think we're seeing most of our questions now on the forgiveness piece. So this is critical. So Dan will walk you through this whole process.

Dan Mayo:

And while this tag team approach is turning out to be great Frank, because I'll answer some questions about that you didn't obviously see because you were speaking. So, one does SEC companies, do they qualify for the PPP? The answer is yes. There's no exclusion for public companies as long as they meet the size requirements. Someone else mentioned it is important to note that rental real estate operations are not eligible. That's true. There's an exclusion for certain passive activities. There a list of exclusions in the SBA. So gambling activity is excluded. There's a list of around 10 to 12 types of businesses that are excluded. They're called ineligible entities. And so if you look online, you'll see in the SBA rules there's a list of those ineligible entities and passive activities. Some of them.

Dan Mayo:

You've got other questions about retirement benefits that includes all retirement benefits or just the matching. It includes the employer's portion of the retirement benefits, not the employee portion. We have clarification on the wages commissions and net earnings is calculated capped at 100,000. That's correct. You do cap the wages at a 100,000, then you add in the health care and benefits on top of that amount, so those are additives and not included in $100,000 cap. The same question came in from someone else on that point. Retirement benefits are added on top of the 100,000. And one or two more and then I'll get back to the slide deck.

Dan Mayo:

The frequently asked questions, someone mentioned there's an update. That's true. There were two versions of the frequently asked questions that came out April 6th and April 8th and April 6th. They came out of the 18 questions April 8th. They updated it. They added two questions at the bottom. That's out there. Those are the two.... In terms of guidance. What we have now. We have the statute, the cares act, we have the interim final rule, which came out in August 2nd and we have the two sets of frequently asked questions, which came out April 6th, April 8th, and then also you have the general SBA regulations governing the 7(a) program.

Dan Mayo:

So I'll get back to the slides and then Frank you can monitor the questions.

Frank Boutillette:

Sure.

Dan Mayo:

We can turn to loan forgiveness now. And this is a very important piece of the equation since this is the prime reason that people are taking out the PPP loans. What is included in loan forgiveness? This'll be important for planning purposes. It includes all eligible expenses paid during the eight week period after the loan is made. If the loan is made March 2nd, you look at the eight week period, while not March, April, we'll say my loan was made today April 10th, and it's the eight weeks after today. Write the date, starting from the day the loan is funded, that's considered when the loan is made, when it's funded, and it's eight weeks after that. What are the eligible expenses? It's very similar to the allowable uses of the loan that Frank talked about in the last slide with one key difference.

Dan Mayo:

First it includes payroll costs up to a 100,000 per year per employee. Because interest on mortgages incurred before February 15th. Rent and utilities before February 15th. Again, we have a description there of what the utilities are, that is in a total list of additional utilities are not included. And also one of the key things here though, it's does not include interest on any other debt obligation. In the allowable expenses, it's slightly broader than the list of forgivable expenses. This'll be important when you're trying to determine what to spend the money on so you can maximize that loan forgiveness, because every dollar of loan forgiveness that's surrendered is sort of a dollar wasted from the businesses point of view. You really want to maximize that loan forgiveness. The loan forgiveness can't exceed the principle amount of the loan, so the entire amount of the loan.

Dan Mayo:

And also they put this cap in there, which is somewhat new, which was not in the statute. That no more than 25% of the forgiven amount can be for those non-payroll costs or what I call the overhead expenses, the interest, the rent and utilities. That cannot exceed 25% of the total amount forgiven under the loan. Normally when the loan and debt is forgiven to a borrower, that's considered cancellation of debt income, and it's taxable unless an exclusion applies under section 108. Under the cares act Congress stakes specifically provided that any debt forgiveness under the PPP program is tax free. And that leads to a couple issues about deduction on the other side. And so we think the IRS is going to come out with guidance at some point. I'm talking about the deduction and whether it's allowable to the borrower, but as of now, there's no guidance on this point, but that's something that we think they're likely to address.

Dan Mayo:

The way this works in general is, the borrower takes out a loan, they get forgiveness and that's tax free. However, the borrower is paying compensation to its employees. That's really funded by the government. What's happening from the borrower's point of view of the business is it's borrowing money, it's tax free, that money, and then it receives a payroll deduction on the back end when it pays its employees. It's receiving a deduction for salary expense and overhead expenses and it's not economically bearing the cost of that expense. That's something we think the IRS may address. We don't know if they're going to take it away or not, but we're saying that it's an unusual circumstance that may be something that gets looked at more seriously. After you sort of compute the tentative amount of this loan forgiveness, using those eligible expenses, the borrower then has to make certain reductions in that forgiveness amount.

Dan Mayo:

If there are head count or wage reductions, which we'll talk about in the next slide. But, it's sort of a two step process to loan forgiveness. First you calculate the amount of forgiveness and then you determine if you have to reduce it for any reductions in employee head count relative to a base period or any reductions in wages relative to a base period. And so we'll get that in a minute. But before that, the borrower is going to have to document its loan forgiveness to the lender. Now this is, these are loans apply through private lenders as Frank mentioned, and we'll talk some more about that a little later in the Q&A section. But the borrower's going to need to document the number of full time employees and the pay rates, as well as those in the base period to prove its calculations on the forgiveness amount.

Dan Mayo:

And then... I believe the borrower is going to have 90 days after that eight week period in order to document its expenses. And then the lender will have 60 days to make a decision after it receives a completed application from the borrower in order to decide how much of that loan forgiveness amount will be actually forgiven. If you turn to the next slide please Frank.

Frank Boutillette:

All right.

Dan Mayo:

Now this is, this slide talks about the reductions in the loan forgiveness amount. This is something obviously, very going to be top of mind in the next few months and even in the next few, even though in the next eight week, immediate eight weeks after companies receive the loan because of the actions they take during that eight week period will determine if they suffer a reduction in the forgiveness amount. And again, a reduction in the forgiveness amount means the loan will have to be repaid. And so from a businesses point of view, there's a real cost there. How do you calculate? Let's start with the headcount reductions over production, the number of full time equivalent employees. Here you multiply the total eligible expenses that are paid during that eight week period or multiply by a fraction, and that's going to determine the amount that's eligible for forgiveness.

Dan Mayo:

When you look at that fraction, let me just see here, you look at the average number of FTEs, this is full time equivalent, this is not the broad concept that we use to determine eligibility for the PPP, but this is a full time equivalent concept where 30 hours equals a week. If you add up two part-timers, a minimum 30 hours equals a full time equivalent employee. I think the average number of FTEs during the eight week period after the loan is made and divide that by, and the borrower has done election year. They have two options, there's a third option for seasonal employers we left off. But the options are that they can use the average number of FTEs during that February to June period in 2019, or if it's more beneficial, the borrower can use the average number of FTEs from January to the end of February of 2020.

Dan Mayo:

As you see here for an example, if during the eight week period the company has 80 employees, but during the period, let's say if they use their first one 2019 February to June, they had a hundred employees. The fraction is 80, over 100 or 80%. 80% of the eligible expenses will be forgivable and not 20%. There'll be a reduction because they reduced the head count by 20%. We're going to have to reduce the forgivable amount by 20%. That's sort of the way the calculation will work on the head count reduction. The second type of reduction that exists is a wage based reduction. And this one is based on each individual employee. It's an amount determined if you reduce any individual employees wages by more than 20%, then there's going to be a reduction in the loan forgiveness amount.

Dan Mayo:

And there's a special rule in this section of the statute that says only employees making 100,000 or less are considered. Now for purposes of this reduction calculation, the statute seems to say if you take a person making a million and reduce them by half to 500,000, that will not cause a reduction in the loan forgiveness amount. But if you reduce someone from 100,000 a year to 50,000 a year, there will be a reduction in the forgiveness amount by the 25,000, which is the amount, you reduce some 50% and you're allowed a 25% reduction. Anything over that is where you reduce the forgiveness amounts. There would be a $25,000 reduction in the forgiveness amount during that, for that reduced employee and the base period here, what are you comparing it to? You're comparing it to their most recent full quarter before the covered period.

Dan Mayo:

The covered period being the eight weeks after the loan is made. You take the loan date, take the most recent full quarter before that, and that's your base period where you're calculating the average wages of the employee during that period. Also, finally I'll mention with regard to both of these reductions, there was a rule that lets companies restore the head count and not suffer a reduction in wages. If they had to let an employee go between April, February 15th and April 26th of this year, then they can re hire that person by June 30th and include them in the eight weeks of eligible expenses that they're going to pay that person and still get a forgiveness amount for those wages. That's going to be important. A couple of things we'll point out here that the, if you hire a different employee, you will not suffer a reduction in head count because you have the same number of FTEs which you would suffer, you might suffer a wage reduction in those. It's not clear how they're going to apply these rules.

Dan Mayo:

We don't think that letting go an employee, you would suffer under both of these tests, you don't have 100% wage reduction and also a headcount reduction. That doesn't seem to make sense. But we really are waiting for guidance on this and a number of other questions on these calculations. And we're in the process of putting together a comprehensive list which will be on our website shortly, withum.com website. And going through the many different uncertainties about this calculation and how it's going to be made, does the head count reduction come first? Which is based on total eligible expenses and then you do the wage reduction. What happens when you let an employee go? Does that apply for the head count reduction? But not the wage reduction? There's a lot of these things, there's just, there isn't guidance at this point.

Dan Mayo:

The SBA has announced that it is going to issue guidance on the loan forgiveness calculation. I believe they said, I think it was the interim final rule, where they said they're going to issue additional guidance. It's kind of a day two issue, right? First, the SBA is busy determining eligibility. People are still applying for these loans. And so the focus for them right now is the affiliation rules and determining who's eligible for the loans. It will become important in the weeks ahead, how to calculate the amount of the forgiveness. And that's going to be sort of the next push. Which is why we're starting now to focus on this, and we're going to get this up on our website because it's relevant when companies apply for the forgiveness. But more importantly, it's relevant as companies are planning during the eight week period, how they're going to spend the money.

Dan Mayo:

It's really information you shouldn't be waiting to figure out how to calculate the forgiveness until after the eight week period is over because you can't fix anything at that point. The only time you can fix it is during the eight week period. With that, I'll turn it back over to you, Frank.

Frank Boutillette:

Great. Thanks. And I just messed everything up here. Sorry about that. I got it back. I saw some of the questions come in, so I'm gonna try to answer them and I'm gonna try to move back to the slides where we've talked about it. Under payroll costs, first of all, for employees and employer that has 1099 independent contractors, the independent contractors are not included in the company's payroll calculation. Okay. The independent contractor can apply on their own. Your landscaper or your accountant, that was the big thing that came up originally was I can pay my accountant and I can take a deduction for it, get credit for him on a payroll cost. It's the gross wages, I know at one point the interim final rule came out and talked about reducing federal withholding and social security tax. That's not the case.

Frank Boutillette:

The FAQs came out and clarified. You use gross wages. You do not use state withholding. Okay. They're looking at the employer's force, because if you think about it, the employer gets $50,000 for an employee. All the with holdings are going to get remitted and the net cheque is going to the employee. What they wanted, they're not obviously covering you for the employer's portion of FICA. And as Dan mentioned earlier, there were a couple of payroll companies and I don't think it's their fault. They were relying on the understanding that the employer shouldn't be out of pocket, but in this case, yes. If the wages come up to 60,000 and you got $5,000 of employer portion of FICA, the employer's got to come up with that 5,000 on their own because they're going to pay the full 60 out. It's going to be a net cheque to the employee, and then the difference is going to be the with holdings that gets sent to the government. Those are not included.

Dan Mayo:

Do you want to talk about the partnership issue and guaranteed payments?

Frank Boutillette:

I was just going to bring it up. Yeah.

Dan Mayo:

Okay.

Frank Boutillette:

Why don't you take that Dan, since you brought it up.

Dan Mayo:

Sure. There's a lot of questions about partner compensation and whether that's included in the definition of employee payroll costs and also guaranteed payments. And we're hearing inconsistent guidance. If you talk to tax lawyers and tax people, they will tell you that K-1 income and draws, draws, partner draws are different than partner compensation. They'll also tell, tax person will also tell you that a guaranteed payment is similar to compensation to wages, salary or commissions, when at least when we're talking about guaranteed payments for services. And when you talk to SBA lawyers, they take a broader view and they are corporate lawyers and they'll tell you that it's a comprehensive concept and it's intended to include both. We're hearing that different banks are treating this issue differently. Some banks are allowing a deduction or rather an inclusion in the payroll costs for a partner draws and guaranteed payments. Some are not, and requiring each individual partner to file separately.

Dan Mayo:

The issue is not whether the loan will be made to the partner. The question is who has to apply for it? And so from the partnership's point of view, it's obviously easier if they've put all the partner draws in there and guaranteed payments so that it's one loan and everything's covered there. But if the bank will not cover that, and the bank takes a view that either guaranteed payments or draws, partner draws are not included in the definition of payroll costs and it will be up to the partners to go file separately for their own PPP loan. And a starting today, there'll be doing that. Unfortunately there's no guidance put out by the SBA on this and different banks have taken different interpretations. And so we can only say that you have to ask your bank, include disclosure on what you're including, what you're not, then the bank can tell you what's covered. Right?

Frank Boutillette:

Exactly. I'm looking at some more questions here. I think some of them are now going to deal with the forgiveness, which I think we're going to have a lot of questions on. And we probably can spend the next 10 minutes talking about the forgiveness. I'll bounce around to that piece. On the forgiveness, the eight week period starts the day the loan is made. Okay. If we had a client that on Wednesday got funded, it was interesting, there was a bank that they received the application on Saturday night and the bank funded $3.6 million on Wednesday, April 8th. I saw the loan document, it was about three or four pages, wasn't very elaborate in any means. And it talked about starting at that date, the first payment you get a six month deferral on the payment and the first payment was going to start October 8th of 2020 and it was at 1% interest. And they've divided over two years the amount.

Frank Boutillette:

And then they would add the principal plus interest. And they stated that any interest, any payments that are made are applied to interest first. There is a late payment penalty in there. The eight weeks starts the day that you get the loan. On the average number of employees, again, it's FTEs, as Dan said, it's 30 hours, if you have two part-timers, that equals one, two part-timers at 15 hours will equal one FTE for this calculation. And the periods that you're looking at, so the eight weeks that you have, if you have 10 employees during the average, and now this is per pay period. How do you calculate that? If you have eight pay periods between February 15th 2019 and June 30th 2019, there's a pay period. Add up the employees that you paid on each day, each pay period, divide by eight, and that'll give you your average FTEs.

Frank Boutillette:

That is the number that you will use as your denominator. And your numerator is the number of FTEs that you paid during the eight week period. That could be a percentage. It could be 80% if you had 10 before and eight now, it's 80%. You'll have the alternative now at your election, you can pick the one, the January 1st 2020 to February 29th 2020. That's an either or and again, you look to see which way you benefit. A lot of times, what will happen in this scenario is interesting is, if you had more employees in 2019 and that's when you're basing the payroll costs that could be much higher than the number of employees you had between January 1st of 2020. In some instances you may have additional, you might have received additional part of the loan that you won't be able to spend because you do have less employees, but you won't be harmed for the fact that you have less employees in the covered period, that eight week period.

Frank Boutillette:

And the salary piece, again, what this is about, this was talking about was if you don't restore everybody to the salary that they were at. Again, the point of this is that if you are paying somebody $1,000 a week and you continue to pay them $1,000 a week during the eight week period, you should be fine, it's when you reduce them more than 25%. If you reduce them to $600, 75% of the $1000 would be $250 or you paid them $600, so there is $150 difference that you will get reduction in the amount forgiven. Dan, you have any other questions in this area? I'm sure there're tons of them missing.

Dan Mayo:

No, just on this one, there's a quirk with this reduction only employees making over $100,000. There's a quirky rule in there about 2019 for the pay periods and so it seems to suggest you don't include someone if at any given pay period, their annualized pay exceeds $100,000 a year, which is kind of strange. But we're going to address this again in this article. We're going to put it on our website, this and other areas where there's just, you see there are quirky, the rules written in a strange way and that we expect the SBA will issue some kind of guidance that makes issues a more common sense approach to the rules. On the head count reduction, when you have the choice there of using the February 19 period or the January 2020 to February 2020 period.

Dan Mayo:

If a company is in growth mode, they're going to have a greater number of employees in 2020 than 2019, they're probably going to elect to use the 2019 number in case they have a lower head count. Now, there won't be a wage reduction. If a company's in downsizing mode from 19 to 20, they have less employees in 20, you're going to want to use the period that has a lower amount of employees so that you're less likely to suffer a reduction in the forgiveness amount.

Frank Boutillette:

There was a question here about the eight week period. Is it paid or accrued? It's paid. You can't accrue, it's what you're actually paying out in cash. I know some clients are trying to say, "Well, if I accrue it like I can take the deduction, I can reduce the amount and pay him later on," No, it's actually what's paid. Rent to related parties? Again, part of the amount that you can get forgiven is rent. And here again, if you look at the, I'm trying to find it, you have to have a lease. It's based on having a rent under a lease that was enforced on February 15th. And I think that's in there too because they know there are probably a lot of related party rents and that have no leases and it's, you're going to have to backdate the lease. And I did not say that. Do not backdate your leases, but I think that [crosstalk 00:40:12]

Dan Mayo:

Let me clarify what you mean there. You mean that there's an oral lease in effect between the parties and you're talking about simply memorializing and writing a lease that's already in effect.

Frank Boutillette:

Yes, that's what I'm saying, that the attorney comes out in Dan, he clarifies it for me. Thank you Dan. What I'm just saying is that, I know that if you do not have a written lease that probably would not count. Now you have to apply for the forgiveness and they want you to apply within 60 days of completing the eight week period. You will apply with the bank and I'm sure that we'll have some information in the loan document about doing that. You will apply to the bank that you want to get the amount forgiven. I believe you will need your pay stubs or at least proof that you made payroll. You will probably have to have your bank statements to prove that you had rent, that you had utilities that were paid and that you had interest on any outstanding debt. That's how that part works for the forgiveness piece, but you're going to have to apply directly to the bank to get that forgiven. It's not an automatic thing.

Dan Mayo:

There's a question here about CAM fees on rent. I assume you're talking about common area maintenance fees. Those usually, you look at the lease agreement, they'd usually add it into definition or rent. They rent includes common area maintenance fees, that likely would be included under the definition of rent. But again, there's no guidance. We just try and help give, come to some kind of common sense interpretation here until there's further guidance. But its certainly the lease agreement in many cases calls that rent which is certainly enough to give you a position to include it under, as rent under a lease in force as of February 15th.

Frank Boutillette:

Yeah, there's a question here about how does a sole proprietor to get a forgiveness amount when they don't pay payroll? And Dan and I talked about this, we moved the cash from your bank account to your personal account. We're not sure. Again, that's something, one of the things that we're looking for guidance because you're right, the money comes into the LLC or the sole proprietor's business bank account. And we think if they just pull that amount out and actually kind of pay themselves that would be enough to pull the money out of the account. We're not sure how they're going to calculate that. Again, that's hopefully going to be clarified when they come out with additional guidance,

Dan Mayo:

Right. We call that moving money from the left pocket to the right pocket. And another interesting issue comes up with that, is what do you do with the forgiveness amount? Is it taxable to the individual? That's also not clear. It's one of the things, again, we're going to put on our list. The forgiveness when you receive the loan, the forgiveness is tax free, but the person then receives compensation, is that taxable compensation? There's, we need more guidance on that to help clear that up. There's a question here about, is a line of credit secured by real estate, is that considered a mortgage? The answer is yes. The way the statute's written on the interest on mortgages has to be a liability of the borrower for that date. And there has to be a mortgage on real property or personal property. We think this covers two scenarios.

Dan Mayo:

One real property covered by a mortgage. And again, the mortgage has to be filed. It looks like it indicates filed a mortgage. It's not really a mortgage if it's not filed. And the second thing is we think the UCC-1 lien on commercial property or personal property but also be covered under this provision because it doesn't, it says a real or personal property and it just talks about a mortgage being filed. That could be a real estate mortgage and it seems like a UCC-1 would apply. But again, there's no guidance on this point. We're hoping to get that in the next round of guidance.

Frank Boutillette:

Some of the questions here are around restoring employees. Somebody asked, that during the eight week period one of their employees actually passed away from COVID and I'm sorry to hear that. Or if you just lay you off your receptionist because you don't need her, you think you don't need her. What we see and what we, I think is going to occur is when you get the loan, you, you hire someone to take that, to replace that person. You don't have to replace the exact person. We had a client say, "I let my receptionist go, I want to hire her back and she found another job. What do I do?" Well, hire another receptionist during that eight week period. Once the loan, once your client gets the loan, what the anticipation is that they come off of unemployment. I think if your employee continues to collect unemployment during the period, you're going to pay them. I think there's going to be a problem.

Frank Boutillette:

The goal here from the government was to get them out of unemployment back on your payroll. You get the loan on May 1st, you hire your employees back on May 1st and start paying them their salary. Again, they don't have to be physically working, because restaurant workers are not working in restaurants. They're sitting home but they're getting their full pay. They're off unemployment, and it's working the way the government wants it to work. That's how you're restoring the employees. Now there is an issue where you have to restore them by June 30th. For the headcount, our belief is that if you had 10 employees before the disaster and then you had eight and then you have eight during the eight week period, and on June 30th, you hire the other two back to get the 10, we believe that the ratio percentage would be 10 over 10 or a 100%.

Frank Boutillette:

You would not be harmed with that calculation. But when you get to the paying employees at a reduction of one to 25%, the second part of the reduction, we think that's where you're going to have, the reduction is going to come into play because that person, when you hire them back, we'll have a zero salary or whatever you pay them on that one pay date. When you look at how much they were making for the full quarter previous, there'll be a lot less than the 25% reduction and therefore you're going to lose some of that forgiveness piece.[crosstalk 00:46:03]

Dan Mayo:

Two more questions I'll answer here. If you have a large amount of cash in the business accounts, has there been any guidance that you'd be eligible for forgiveness? There's nothing in the forgiveness rules talking about having cash on the balance sheet. I think this issue goes to your qualification or eligibility for the PPP loan in the first place. And so we understand that banks are not going to be doing a significant amount of due diligence or underwriting in making these loans. They're simply looking at the payroll, verifying that the documentation that taxpayer provides matches the taxpayer's calculation on the payroll amounts, they're not going to be looking at the credit worthiness of the borrower. The cash should not be an impediment to getting the PPP loan, but again, you do have to make that representation that the loan is necessary to support the ongoing operations.

Dan Mayo:

Next question here is about the affiliation rules that the affiliation rules apply. Can each company apply separately? The answer is no. This is the issue that a venture capital and private equity firms are having. You have a private equity firm, they'll say that owns 80% of company A, 80% of company B and the two companies are totally unrelated. Different employees, different businesses and have no connection with each other whatsoever other than that common owner. Unfortunately when company A tries to do its analysis, when it does its affiliation, it has to include the employees in B and if there's two of them are over 500 A's ineligible. Similarly, when B looks to file its own PPP application. It applies, the affiliation has included the employees from A, so B is also an ineligible, so that's the way the affiliation rules. It brings in employees to your total count to determine whether you're eligible. In that case the individual companies would not be eligible under the affiliation rules.

Frank Boutillette:

I'm just laughing because I saw somebody had a question here. What if you have 10 employees in seven stay unemployed and you bring back seven new people for the headcount. That's great. And then your higher your mother-in-law, I don't think you could pay her enough. But yeah, I mean you can hire family members back, again, I think you want to do this in good faith. I mean when your client is signing the loan application, there's a presumption that the application is signed in good faith. I'm assuming that the forgiveness will also be done in good faith. And if there are any I'll say funny games happening, just be careful because there are criminal charges that can be brought against you. I can assure you that there is a lot of fraud going to happen through this process. It happens all the time, right? I'm sure this is not an exception. I'm sure the government would be looking for those types of things.

Frank Boutillette:

I would say, let's be honest. Try not to game the system. This is really to get money into the hands of those that need it. I always keep that in mind when I'm advising my clients and when they try to do some of these things is look, "Can you honestly sign that loan document and say that this is real?" Let's see-

Don Meyer:

Frank and Dan, there a few questions that we've received, more than a few actually, that we've received that you can't see. We got another them some other way. Is that okay if I ask you those questions? If you've already answered them, we can move on. Or if you want more information that would be specific, but I'll just throw a few at you and we'll see where it goes.

Frank Boutillette:

Okay.

Don Meyer:

All right. The first one is, can a CPA firm include partners up to $100,000 in payroll costs of the firm, even though they're not W2

Dan Mayo:

We addressed that question. Yeah.

Frank Boutillette:

Yes, partners can get, partners can be included in that. And that was the question where there's one bank we know of that said self-employed should file separately from the actual entity. We when including them in with the application for the business and their self employed income. And there we will be using their guaranteed payments would count as part of that as well into what the regular, the company files. So yes.

Don Meyer:

Right. And I apologize if I ask questions or ask them, I'm not smart enough to know the difference. Next one, under the cares act, if a nongovernmental entity receives a PPP loan from the SBA of $750,000 or greater, will it trigger a single audit in accordance with the uniform guidance?

Frank Boutillette:

That's an audit question. Thank you. I finally got an audit question. Unfortunately I'm not a yellow book specialist, so but you're saying is that, I don't think it's a grant first of all, the amount that a non governmental agency is getting, it's a loan. And then it will be forgiven. It's not a grant. I don't think it would trigger, but please reach out to Withum and we'll get one of our single audit or uniform guidance, I think it's called now. A specialist to help you out with that. But I appreciate the audit question.

Don Meyer:

I picked it out just for you Frank. Alright. Does the $100,000 limit on payroll costs include health insurance and retirement plan payments?

Dan Mayo:

Yeah, we addressed this one. It does not. Those are on top of the $100,000. $100,000 applies to the gross salary or wages, and then on top of that, you add in the other items such as an employer retirement contributions, healthcare, et cetera.

Don Meyer:

Okay. Has there been any info on whether or not guaranteed payments can be considered compensation eligible to be included in payroll costs for PPP loans?

Frank Boutillette:

Yes. Yeah. The guaranteed payment on a partner can be considered towards their $100,000.

Don Meyer:

Okay. What should a self employed individual do if their 2019 schedule C is not ready yet given the tax deadline was moved?

Frank Boutillette:

We've talked about that internally too. My belief is that they have sets of books and records, so they have QuickBooks, they can probably print out what their QuickBooks profit and loss is and they can use that. Will the bank accept that as substantiation? Talk to the banker. I think if you have a good relationship with your bank, they may accept that for you. And again, and with the bank is doing, one of the FAQs came out and they said the bank should be taking this information in good faith, that they have to believe that the borrower one was eligible to apply for the loan and two meets all the requirements and they prepared the loan information accurately in accordance with the law.

Don Meyer:

Some of the next questions I'm going to read are a little involved. The application provides funding for two and a half times 2019 average monthly payroll. The loan proceeds may then be used for payroll, rent, mortgage, interest and utilities. But if 75% or more of the proceeds are used to pay payroll and that amount will be forgiven, is that correct?

Dan Mayo:

Yes.

Don Meyer:

All right. Has there been any info on whether or not guaranteed payments can be considered compensation eligible to be included in payroll costs for PPP loans?

Frank Boutillette:

Yeah, we answered that. Yeah. For the department commander, yes.

Don Meyer:

How do you calculate the annual wages for a company which started in September 2019?

Dan Mayo:

For what purpose?

Don Meyer:

I guess it would probably be for the amount of the loan.

Dan Mayo:

Oh, for the amount of loans? I mean, the best you can do is come up with a monthly average, right?

Frank Boutillette:

Yeah. It would be your average, I think would be your monthly average to from the time you started to December 31st or to March 31st whichever period you divide by those periods and that's your average month. Again, this is based on an average monthly periods. Even if you had one month and that was it, you probably can use that month as well. Now you have to be in business on February 15th 2020 to be able to apply for the loan.

Dan Mayo:

And keep in mind too, there's four periods you can use to calculate your monthly payroll for the determining maximum loan amount. You can use 2019 or you can roll it forward and use February to January of 2020. You can roll it forward to end the 12 month period ending in February and then a 12 month period ending in March. The interim final rules are the FAQs, I forget, which allow for any of those for whichever is most advantageous. But it really depends on the bank, the banks to gatekeeper here. And if the particular bank you're working with requires 2019 data, well that's what you have to provide.

Don Meyer:

Okay. I think I must be getting smarter because I'm actually seeing questions that you've already answered. Here's one. And you might've answered this one already, but do we need to annualize payroll or gross wages per year to date payroll reports? No way that doesn't make any sense, nevermind. Are we using FTE employees in all calculations?

Dan Mayo:

No. The only one you're not using them for is at determining eligibility for the loan. Is that right, Frank?

Frank Boutillette:

Yes. Yeah. When you're determining how many employees you have, a part-timer and a full-timer are equal. One part-timer equals one full timer.

Don Meyer:

Okay. Do you include all payroll for a part time employee who is not equivalent full time employee? Okay. Do you include payroll for a retired corporation employee who no longer is providing services to the company?

Frank Boutillette:

I think what they're saying there, Dan, is they worked in 19 and they retired on December 31st 19. You would get their benefit because you will be able to use the one month average. You'll get the loan for them, but you won't have anything to pay. That amount won't be forgiven in essence because you have nobody, unless you replace that person.

Dan Mayo:

Right. They're included. The answers are included, but you're going to have a reduction in headcount. This is another question you receive. What if someone resigns? Like determination, retirement, same thing as opposed to being fired. The law, the rules don't distinguish between whether the company fires them or they resign or quit on their own or retire. As long as there's a reduction in headcount, there's a reduction in the loan forgiveness amount. But that doesn't mean the money can be reallocated to the extent you're able to maximize forgiveness.

Don Meyer:

All right. Trying to read them.

Frank Boutillette:

Well, you're looking down here. The question is in regard to self-employment partners, if you're not getting straight answers from the bank at any time when we've heard that, that some banks aren't responsive. We're doing and we're recommending to our clients is full disclosure on the application. If you've taken certain positions, write that down in the application, how you calculated the amount of the gross wages or health insurance or the 401k match, for instance. Full disclosure so the bank knows exactly what you did and then you're preparing it in good faith. That's our position and we've been suggesting that to all of our clients.

Don Meyer:

Yeah. Here's a couple of-

Dan Mayo:

Another question, Don that came in and just says, if you restore an employee, does that mean you have to give them back pay that they hadn't received during their absence? The answer is no. But that would be... The rule just says, if you hire them back by June 30th, you can include them in your calculations to the eight week period and you can receive forgiveness for their payments. Again, the goal of this legislation is to keep people off of the unemployment rolls, so that's why they had this, they realized that people were getting laid off prior to this stimulus being inactive. Now there's a stimulus is here, they're saying bring them back on the payroll, pay them. And that's what the legislation is trying to do, as sort of a feature of the legislation. If someone asks, can I bring people back? The answer is yes.

Frank Boutillette:

Question here about relief for rental partnership. A rental partnership is not eligible, it's not an eligible entity to apply for the PPP loan. They can apply under the IDL loan, like I said. And there is a spot for lost rents to fill out on the application. That's all online by the way. You go to the sba.gov and you fill out an online application. But again, what we're hearing is that that's going to be limited to number of employees. If you have no employees, we're not exactly sure what happens. Again, there was a process to get the actual loan, but that's down now. And the only way to go through their site is to go through the grant first and then push the button and wait. [inaudible]

Dan Mayo:

And to that point too, Frank, we're hearing that the passive rental real estate is excluded, but the management company is included. A lot of real estate companies have a management company that's a pay mass common and paymaster for various entities. That company would be eligible for the PPP loan because its active income, they're earning into the active management company.

Frank Boutillette:

Right. And that's a good point, Dan, about when you mentioned about the common paymaster, if you're using a PEO, because what typically the banks are asking for is a copy of the 940 or the W2's, so they can look at the... And a lot of them want 2019 for the fact that they can look at your gross wages, they can match it up to the payroll returns and they say, "This looks good." When you using a common paymaster or a PEO, they will accept any documentation from the PEO on which employees are yours. You can take their printouts and go to the bank with that. Because again, the banks do will need some information from your client. They're just not going to accept the free page loan document.

Don Meyer:

I was going to ask one more question and then if there were any other questions in the chat to address, we could do that. And then we'll wrap up. This question is, what impact does mandatory paid sick leave and extended family leave have on the PPP? And the PPP loan proceeds be used to pay the main mandated leaves?

Dan Mayo:

The answer is no. There's a specific exclusion in the definition of payroll costs for a sick leave and family leave under that FFCRA legislation, which is the phase two legislation. And the reason there is, they don't want, they're not going to pay themselves back in essence, because the government's paying those wages. They're not going to give the employer. But then we have forgiveness to pay him a second time.

Don Meyer:

Okay. Not answered the second question, which was, would loan proceeds used for such purposes qualify for loan forgiveness? I assume the answer is no. Are there any questions in the chat you wanted to address before we sign off?

Dan Mayo:

There's a lot of them. I think we covered most of them. There's one here we covered, but I'll mention it. The employer share of FICA Medicare is excluded so it neither increases the payroll expenses and it doesn't decrease the payroll expenses. It's just ignored completely. The federal FICA Medicare taxes.

Frank Boutillette:

Here's, here's an interesting question Dan. I'm going to ask it and I'm going to try to answer it and then, multiple schedules sees same owner. Can you confirm if only one PPP and my understanding is that you only have to apply for one PPP loan per entity. My position is, I personally wouldn't apply for three different ones if I have three different schedules Cs. I get paid more than the $8,333 a month that's in the law. Again, you have to sign that document and I think you'd have to, and you also on the, by the way, have to put in all related entities on the application form. I think they will hopefully flag that, you agree Dan?.

Dan Mayo:

Yeah, I agree that it's almost like the affiliation concept, same person you have to affiliate. And it seems like it's one person, one business.

Frank Boutillette:

Triple dipping. Right. You think about it. Yeah. Yeah.

Don Meyer:

Well Frank and Dan, unless there was anything else you wanted to add, I was gonna wrap it up.

Dan Mayo:

Sure. No, I think this was actually a great format because we've done it, Frank and I have done a lot of these presentations and it's good to address what people, directly what they care about as opposed to just running through a lot of slides the most of the time.

Don Meyer:

Right, right. And, and thank you very much for doing this. I'll speak for the 200 or so members that were on. This is tremendously helpful. We're getting so many questions from members that we haven't been able to answer. This has been absolutely terrific. And anytime you get 200 CPAs when they're not getting CPE credit, you know it's an important topic. You guys really, you brought them in. Just a reminder as Frank and Dan said, if you want to go to Withum, W I T H U m.com, you can see a lot of great updates. Also, you can go to njcpa.org/coronavirus we'll also be having the updates and we're also going to post this video so you can take a look at it and also be on all of our social media platforms as well.

Don Meyer:

Again, thank you to Frank and Dan, we really appreciate it. Keep checking your email and the website for updates, on not only the PPP, but also the New Jersey filing deadlines. We'll have more information on that later today. And with that, I will wish you all a safe Friday. A great good Friday, Passover, Easter, all of that. And stay safe, everybody. Bye. Bye.